Supreme Court, U.S.
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NO. 87-353

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

REATHER P. ARNOLD,

Petitioner,

VS.

SOUTH CAROLINA PUBLIC SERVICE AUTHORITY,

Respondent.

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE SOUTH CAROLINA SUPREME COURT

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QUESTION PRESENTED

Is it a violation of the constitutional obligation to pay "just compensation," to hold that the value of property taken in condemnation cannot be valued in combination with adjoining lands without unity of ownership?

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Reather P. Arnold, Petitioner, herein replies to Respondent's Return to the Petition for Writ of Certiorari filed by Petitioner on August 28, 1987.

JURISDICTION

Respondent asserts in its Return that this Petition for Writ of Certiorari should be denied on jurisdictional grounds because no constitutional issue is involved and none was ever presented to any South Carolina Court.

The question of whether property taken in condemnation can be valued in combination with adjoining lands without unity of ownership is fundamentally a question of "just compensation" as required by the Fifth Amendment to the Constitution of the United States.

As this Court stated recently in the case of First Evangelical Lutheran Church of Glendale v. Los Angeles County, 107 S. Ct. 2378 (1987):

> Consideration of the compensation question must begin with direct reference to the language of the Fifth Amendment, which

> provides in relevant part that 'private property [shall not] be taken for public use, without just compensation.'

Id. at 2385.

Petitioner clearly addressed the issue of "just compensation" in her Question Presented on appeal to the South Carolina Supreme Court. (Appendix A) The question before that court and the one that has remained throughout is whether a condemned piece of property can be valued in combination with adjoining properties without unity of ownership.

Furthermore, the Petition for Rehearing submitted by Petitioner to the South Carolina Supreme Court specifically states that the question before the court is one of "just compensation" as provided by the Constitution of the United States. (Appendix B)

CONCLUSION

Petitioner has met the jurisdictional requirements of 28 U.S.C. Section 1257(3) for a review by this Court on Writ of Certiorari.

Therefore, for the reasons stated in the Petition for Writ of Certiorari filed by Petitioner with this court on August 28, 1987, Writ of Certiorari should be granted.

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(Appendices follow)

APPENDIX A

QUESTION PRESENTED IN THE
BRIEF OF APPELLANT ON APPEAL TO
THE SOUTH CAROLINA SUPREME COURT:

QUESTION PRESENTED

CAN A CONDEMNED PIECE OF PROPERTY BE CONSIDERED IN COMBINATION WITH ADJOINING PROPERTIES FOR DETERMINING HIGHEST AND BEST USE? (Exceptions 1, 2, 3 and 4)

APPENDIX B

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Reather P. Arnold,

Appellant

-v- South Carolina Public Service Authority,

Respondent

Appeal from Berkeley County

Frank P. McGowan, Jr., Judge

Opinion No. 22711

Heard March 24, 1987 -

- Filed April 27, 1987

PETITION FOR REHEARING

TO: The South Carolina Supreme Court

The Appellant respectfully petitions the Court for a rehearing in the above captioned case in that the

Court has overlooked or misapprehended the points below:

1. The question before the Court is not an evidentiary question but a question of "just compensation" as provided for in both the South Carolina Constituion and the Constituion of the United States.

2. The Court failed to recognize the guiding principle in determining "just compensation" as set forth by the United States Supreme Court in Olson v. United States, 292 U.S. 246 (1934):

> Just Compensation includes all elements of value that inhere in the property, but it does not exceed market value fairly determined. The sum required to be paid the owner does not depend upon the uses to which he has devoted his land but is to be arrived at upon just consideration of all the uses for which it is suitable. The highest and most profitable use of which the property is adaptable and

> needed or likely to be needed in the reasonably near future is to be considered, not necessarily as the measure of value, but to the full extent that the prospect of demand for such use affects the market value while the property is privately held. Boom Co. v. Patterson, 98 U.S. 403, 408. Clark's Ferry Bridge Co. v. Public Service Comm's., 291 U.S. 227 2 Lewis, Eminent Domain, 3d ed., §707, p. 1233. 1 Nicholas, Eminent Domain 2d ed. §220, p. 671. The fact that the most profitable use of a parcel can be made only in combination with other lands does not necessarily exclude that use from consideration if the possibility of combination is reasonably sufficient to affect market value. (Emphasis added)

3. The Court has in effect improperly overruled its own decision of City of Orangeburg v. Buford, 227 S.C. 280, 87 S.E.2d 822 (1955) wherein it states:

> The landowner was entitled to compensation upon the basis of most advantageous

and profitable use of her land. In estimating the value of property condemned, all of the uses to which it may be applied, or for which it is adapted, which affect its value in the market, are to be considered, and not merely the condition it is in at the time and the use to which it was then applied by the owner. Nathahala Power & Light Co. v. Moss, 220 N.C. 200, 17 S.E.2d 10; 18 AM. Jr., Eminent Domain, Section 244. It is true that the improvements on the property condemned were to be made in conjunction with those on adjacent property but 'the fact that the most profitable use of a parcel can be made only in combination with other lands does not necessarily exclude that use from consideration if the possibility of combination is reasonably sufficient to affect market value.' Olson v. United States, 292 U.S. 246, 54 S.Ct., 704, 709 78 L.Ed. 1236. (Emphasis added)

4. The Court has failed to recognize that the application of unity of ownership only applies when there is

an attempt to apply severence damages to more than one tract of land. Under the Constitutional requirement of "just compensation" unity of ownership can not apply to the valuation of the land taken; in the case of the land taken the landowner is entitled to compensation upon the basis of the most advantageous and profitable use of his land, to include valuation in combination with other lands.

Respectfully submitted,

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